

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 1:23-cv-20304-RKA

ZAGG INC.,

Plaintiff,

v.

MENACHEM MENDEL ICHILEVICI,
TX TRADING INC., and
DVG TRADE LLC,

Defendants.

**DEFENDANT TX TRADING INC.'S ANSWER TO SECOND AMENDED
COMPLAINT AND AFFIRMATIVE DEFENSES**

Defendant TX Trading Inc. (“Defendant”), by and through its undersigned counsel, and for its Answer and Affirmative Defenses to Plaintiff Zagg, Inc.’s (“Plaintiff”) Second Amended Complaint (the “Complaint”), respectfully sets forth as follows:¹

NATURE OF THIS ACTION

1. In response to Paragraph No. 1 of the Complaint, Defendant admits Plaintiff claims to be seeking injunctive relief and monetary damages but denies it has committed any “trademark counterfeiting and infringement, false advertising, and unfair competition under the Lanham Act, 15 U.S.C. § 1051, et seq.”

2. Defendant denies the allegations contained in Paragraph No. 2 of the Complaint.

3. Defendant denies the allegations contained in Paragraph No. 3 of the Complaint.

Defendant states that it has not offered for sale or sold Zagg products on the Internet.

4. Defendant denies the allegations contained in Paragraph No. 4 of the Complaint.

¹ Defendant denies each and every heading and sub-heading in the Complaint to the extent it contains any allegations.

5. Defendant denies the allegations contained in Paragraph No. 5 of the Complaint.

6. Defendant denies the allegations contained in Paragraph No. 6 of the Complaint.

7. Defendant denies the allegations contained in Paragraph No. 7 of the Complaint.

JURISDICTION AND VENUE

8. In response to Paragraph No. 8 of the Complaint, Defendant admits this Court has subject matter jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338 (a) and (b) but denies any liability and denies that Plaintiff is entitled to the relief that it seeks.

9. Defendant admits this it is subject to the jurisdiction of this Court and that it has a place of business in this District, but otherwise denies the allegations contained in Paragraph No. 9 of the Complaint.

10. Defendant does not dispute venue is proper in this District because it resides here but otherwise denies the allegations contained in Paragraph No. 10 of the Complaint.

PARTIES

11. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 11 of the Complaint, and therefore denies them.

12. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 12 of the Complaint, and therefore denies them.

13. Defendant admits it is a Florida corporation and does business in Florida. Defendant otherwise denies the allegations contained in Paragraph No. 13 of the Complaint. Defendant states that it has **not** sold Zagg Products and does **not** do business on Amazon.com.

14. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 14 of the Complaint, and therefore denies them.

15. Defendant denies the allegations contained in Paragraph No. 15 of the Complaint.

16. Defendant denies the allegations contained in Paragraph No. 16 of the Complaint.

17. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 17 of the Complaint, and therefore denies them.

18. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 18 of the Complaint, and therefore denies them.

19. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 19 of the Complaint, and therefore denies them.

20. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 20 of the Complaint, and therefore denies them.

21. Defendant admits that the information reflected in its filings with the Florida Secretary of State is correct. Otherwise, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph No. 21 of the Complaint, and therefore denies them.

22. Defendant admits that Beny Ichilevici and Menachem Ichilevici are familially related. Defendant denies the remaining allegations contained in Paragraph No. 22 of the Complaint.

23. Defendant denies the allegations contained in Paragraph No. 23 of the Complaint.

FACTS

24. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 24 of the Complaint, and therefore denies them.

25. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 25 of the Complaint, and therefore denies them.

26. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 26 of the Complaint, and therefore denies them.

27. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 27 of the Complaint, and therefore denies them.

28. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 28 of the Complaint, and therefore denies them.

29. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 29 of the Complaint, and therefore denies them.

30. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 30 of the Complaint, and therefore denies them.

31. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 31 of the Complaint, and therefore denies them.

32. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 32 of the Complaint, and therefore denies them.

33. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 33 of the Complaint, and therefore denies them.

34. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 34 of the Complaint, and therefore denies them.

35. Defendant admits that Plaintiff is not affiliated with Defendant, but Defendant lacks sufficient knowledge or information to form a belief regarding the remaining allegations in Paragraph No. 35 of the Complaint, and therefore denies them.

36. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 36 of the Complaint, and therefore denies them.

37. Defendant denies the allegations contained in Paragraph No. 37 of the Complaint.

38. Defendant denies the allegations contained in Paragraph No. 38 of the Complaint.

39. Defendant denies the allegations contained in Paragraph No. 39 of the Complaint.

40. Defendant denies the allegations contained in Paragraph No. 40 of the Complaint.

41. Defendant denies the allegations contained in Paragraph No. 41 of the Complaint.

42. Defendant denies the allegations contained in Paragraph No. 42 of the Complaint.

43. Defendant denies the allegations contained in Paragraph No. 43 of the Complaint.

44. Defendant denies the allegations contained in Paragraph No. 44 of the Complaint.

45. Defendant denies the allegations contained in Paragraph No. 45 of the Complaint.

46. Defendant denies the allegations contained in Paragraph No. 46 of the Complaint.

47. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 47 of the Complaint, and therefore denies them.

48. Defendant denies the allegations contained in Paragraph No. 48 of the Complaint.

49. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 49 of the Complaint, and therefore denies them.

50. Defendant denies the allegations contained in Paragraph No. 50 of the Complaint.

51. Defendant denies the allegations contained in Paragraph No. 51 of the Complaint.

52. Defendant denies the allegations contained in Paragraph No. 52 of the Complaint.

53. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 53 of the Complaint, and therefore denies them.

54. Defendant denies the allegations contained in Paragraph No. 54 of the Complaint.

55. The Complaint does not include a Paragraph No. 55.

56. Defendant denies the allegations contained in Paragraph No. 56 of the Complaint.

57. Defendant denies the allegations contained in Paragraph No. 57 of the Complaint.

58. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 58 of the Complaint, and therefore denies them.

59. Defendant denies the allegations contained in Paragraph No. 59 of the Complaint.

60. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 60 of the Complaint, and therefore denies them.

61. Defendant denies the allegations contained in Paragraph No. 61 of the Complaint.

62. Defendant denies the allegations contained in Paragraph No. 62 of the Complaint.

63. Defendant denies the allegations contained in Paragraph No. 63 of the Complaint.

64. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 64 of the Complaint, and therefore denies them.

65. Defendant denies the allegations contained in Paragraph No. 65 of the Complaint.

66. Defendant denies the allegations contained in Paragraph No. 66 of the Complaint.

67. Defendant denies the allegations contained in Paragraph No. 67 of the Complaint.

68. Defendant denies the allegations contained in Paragraph No. 68 of the Complaint.

69. Defendant denies the allegations contained in Paragraph No. 69 of the Complaint.

70. Defendant denies the allegations contained in Paragraph No. 70 of the Complaint.

71. Defendant denies the allegations contained in Paragraph No. 71 of the Complaint.

72. Defendant denies the allegations contained in Paragraph No. 72 of the Complaint.

73. Defendant denies the allegations contained in Paragraph No. 73 of the Complaint.

74. Defendant denies the allegations contained in Paragraph No. 74 of the Complaint.

75. Defendant denies the allegations contained in Paragraph No. 75 of the Complaint.

76. Defendant denies the allegations contained in Paragraph No. 76 of the Complaint.

77. Defendant denies the allegations contained in Paragraph No. 77 of the Complaint.

78. Defendant denies the allegations contained in Paragraph No. 78 of the Complaint.

79. Defendant denies the allegations contained in Paragraph No. 79 of the Complaint.

80. Defendant denies the allegations contained in Paragraph No. 80 of the Complaint.

81. Defendant denies the allegations contained in Paragraph No. 81 of the Complaint.

COUNT I

(Trademark Counterfeiting and Infringement in Violation of 15 U.S.C. § 1114)

82. Defendant repeats and incorporates its responses to Paragraph Nos. 1-81 of the Complaint as if fully set forth herein.

83. Paragraph No. 83 of the Complaint contains legal and/or factual conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations contained in this paragraph.

84. Defendant denies the allegations contained in Paragraph No. 84 of the Complaint.

85. Defendant denies the allegations contained in Paragraph No. 85 of the Complaint.

86. Defendant denies the allegations contained in Paragraph No. 86 of the Complaint.

87. Defendant denies the allegations contained in Paragraph No. 87 of the Complaint.

88. Defendant denies the allegations contained in Paragraph No. 88 of the Complaint.

89. Defendant denies the allegations contained in Paragraph No. 89 of the Complaint.

90. Defendant denies the allegations contained in Paragraph No. 90 of the Complaint.

91. Defendant denies the allegations contained in Paragraph No. 91 of the Complaint.

92. Defendant denies the allegations contained in Paragraph No. 92 of the Complaint.

93. Defendant denies the allegations contained in Paragraph No. 93 of the Complaint.

COUNT II

(Unfair Competition and False Designation of Origin in Violation of 15 U.S.C. § 1125(a))

94. Defendant repeats and incorporates its responses to Paragraph Nos. 1-81 of the Complaint as if fully set forth herein.

95. Paragraph No. 95 of the Complaint contains legal and/or factual conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations contained in this paragraph.

96. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 96 of the Complaint, and therefore denies them.

97. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 97 of the Complaint, and therefore denies them.

98. Defendant denies the allegations contained in Paragraph No. 98 of the Complaint.

99. Defendant denies the allegations contained in Paragraph No. 99 of the Complaint.

100. Defendant denies the allegations contained in Paragraph No. 100 of the Complaint.

101. Defendant denies the allegations contained in Paragraph No. 101 of the Complaint.

102. Defendant denies the allegations contained in Paragraph No. 102 of the Complaint.

COUNT III
(Piercing the Corporate Veil and Alter Ego Liability)

103. Defendant repeats and incorporates its responses to Paragraph Nos. 1-81 of the Complaint as if fully set forth herein.

104. Paragraph No. 104 of the Complaint contains legal and/or factual conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations contained in this paragraph.

105. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 105 of the Complaint, and therefore denies them.

106. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 106 of the Complaint, and therefore denies them.

107. Defendant denies the allegations contained in Paragraph No. 107 of the Complaint.

108. Defendant denies the allegations contained in Paragraph No. 108 of the Complaint.

109. Defendant denies the allegations contained in Paragraph No. 109 of the Complaint.

110. Defendant denies the allegations contained in Paragraph No. 110 of the Complaint.

111. Defendant denies the allegations contained in Paragraph No. 111 of the Complaint.

DEFENSES

Defendant sets forth below its affirmative defenses to the Complaint. By setting forth these affirmative defenses, Defendant does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiff. Moreover, nothing stated herein is intended or shall be construed as an acknowledgment that any particular issue or subject matter is necessarily relevant to Plaintiff's allegations.

As separate and distinct affirmative defenses, Defendant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

The Complaint, or one or more of the claims set forth therein, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by their failure to bring suit against any actual alleged infringers of its marks and other necessary and indispensable parties.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because Plaintiff has not sustained any damages for which Defendant is responsible.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part, because if Plaintiff has been damaged, it is the result of its own conduct or the conduct of third parties, for which Defendant is not responsible.

FIFTH AFFIRMATIVE DEFENSE

Defendant presently has insufficient knowledge or information upon which to form a belief whether it may have additional, yet unstated, affirmative defenses. Defendant therefore reserves its right to supplement or amend these defenses as discovery is conducted, and it does not knowingly or intentionally waive any applicable defense.

JURY DEMAND

Defendant hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure on all issues so triable.

DEFENDANT'S PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment as follows:

- A. That Plaintiff takes nothing by reason of its Complaint;
- B. That the Complaint, and each and every purported claim for relief therein, be dismissed with prejudice;
- C. For judgment in favor of Defendant on Plaintiff's Complaint;
- D. For attorneys' fees and costs incurred to the extent permitted by law; and
- E. For such other and further relief as this Court may deem just and proper.

DATED: May 3, 2023
Boca Raton, Florida

Respectfully submitted,

CAHEN LAW, P.A.
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By: /s/ Geoffrey M. Cahen
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed electronically, this **3rd day of May, 2023**, to:

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By: s/ Geoffrey M. Cahen
Geoffrey M. Cahen